

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS

Case No. 23-40709-CJP

Chapter 7

In re:

WESTBOROUGH SPE LLC

JOINT STATUS REPORT

NOW COME the Chapter 7 Trustee (the “Trustee”) for Debtor Westborough SPE LLC (“Debtor”) and Town of Westborough (the “Town,” and together with the Trustee, the “Parties”) and hereby jointly provide the following status report for the Court in advance of the hearing scheduled for Tuesday, February 13, 2024 at 10:30 am. As set forth herein, the Parties intend to proceed with the hearing as a status conference for the purposes of addressing the Parties’ ongoing settlement discussions and any preliminary issues concerning the various pending motions, but request that the Court defer any formal argument or adjudication on the motions so as to allow the Parties additional time to complete their settlement discussions.

1. On August 31, 2023, Petitioning Creditors Nathanson & Goldberg, P.C. (the Debtor’s counsel) and MobileStreet Trust commenced this bankruptcy proceeding by filing an involuntary Chapter 7 petition against the Debtor.

2. On October 3, 2023, the Town filed a Motion for Relief from the Automatic Stay (Doc. No. 20) (the “Motion for Relief”), seeking an order of the Court allowing the Town’s tax title foreclosure action pending in Massachusetts Land Court, Town of Westborough v. Westborough SPE, LLC, et al. (Mass. Land Ct. No. 19 TL 000768) (the “Tax Foreclosure Action”), concerning the property located at 231 Turnpike Road, Westborough, Massachusetts (the “Property”) to proceed, namely to allow the Land Court to adjudicate the motion to vacate

judgment that the Debtor had purported to file in the Land Court in January 2023, which adjudication was halted by the filing the involuntary Chapter 7 petition.

3. On October 12, 2023, the Trustee was appointed. (Doc. No. 29)

4. The Court held a hearing on the Motion for Relief on November 30, 2023. At the hearing, the Trustee raised the possibility of brokering a settlement to resolve all issues concerning the Property as part of administration of the bankruptcy estate. The Court continued the hearing for three weeks until December 21, 2023, in order to allow the Trustee to further explore the possibility of settlement and the question of removal of the Tax Foreclosure Action (despite the Town's objections to such removal), as well as to consider whether to commence an adversary proceeding under 11 U.S.C. § 548(a) to seek to avoid the tax title foreclosure judgment that entered in the Tax Foreclosure Action on January 5, 2022.

5. On December 5, 2023, the Trustee sent the Town's undersigned counsel a written settlement proposal. The Town's undersigned counsel provided the proposal to the Town Manager, who in turn provided it to the Town's Select Board, the entity which controls the Town's legal strategy and ultimately must approve any settlement. As the Select Board required additional time to consider the proposal in executive session pursuant to G.L. c. 30A, § 21(a)(3), on December 15, 2023, the Parties jointly moved to further continue the hearing on the Town's Motion for Relief. (Doc. No. 57) The Court granted that joint motion and rescheduled the continued hearing to February 13, 2024.

6. Subsequently, the Parties have continued to discuss a possible settlement and on February 7, 2024, the Town's undersigned counsel sent the Trustee a written settlement counterproposal as part of confidential settlement negotiations. The Town's undersigned counsel and the Trustee discussed the Town's counterproposal further on February 8, 2024, and agreed

that while some issues still require further negotiation to reach an agreement in principle, and any settlement agreement must be approved by the Town's Select Board, the Parties appear to have reached consensus on the structure and key terms of a settlement and are making progress towards an agreement that can be presented to the Town's Select Board for approval. The Parties also anticipate that the settlement may be able to resolve or narrow certain issues and disputes involving some of Debtor's other creditors, thus streamlining the Trustee's administration of the bankruptcy estate. Upon such approval and execution by the necessary parties, the settlement would be presented to the Court for its approval pursuant to Fed. R. Bankr. P. 9019.

7. Several motions or issues are presently scheduled to be heard by the Court at the February 13 hearing in addition to the Town's Motion for Relief. Specifically, on January 16, 2023, the Town filed a Motion to Dismiss this bankruptcy pursuant to 11 U.S.C. § 707(a) (Doc. No. 69) (the "Motion to Dismiss"); on January 17, 2023, the Trustee filed a Notice of Removal of the Tax Foreclosure Action (Doc. No. 74, which has been re-docketed as Doc. No. 1 in Related Case No. 24-ap-04006); and on February 2, 2024, the Trustee filed a Motion to Compel the California State Controller to Surrender Property (Doc. No. 78). Additionally, on February 7, 2024, the Town filed a Motion to Remand and/or Abstain from Tax Foreclosure Action (Doc. No. 83, which has been re-docketed as Doc. No. 2 in Related Case No. 24-ap-04006) (the "Motion to Remand"). Although the Motion to Remand has not yet formally been noticed for the February 13 hearing, in light of the Court's notice to hold a status conference on the Trustee's Notice of Removal at the hearing (Doc. No. 82), the issues presented by the Town's Motion to Remand would necessarily be raised.

8. All of these pending matters would be resolved or narrowed by the settlement being discussed by the Parties. The Parties intend to address the progress of the settlement with the

Court at the February 13 hearing (without revealing any confidential settlement communications, of course). Although preliminary discussions concerning the pending motions may necessarily take place as part of the colloquy with the Court concerning the status of the settlement and the overall status of the proceedings, the Parties believe that formal argument on the pending motions would be a waste of the Parties' and the Court's resources in light of the progress made towards settlement. As such, the Parties suggest that the Court treat the February 13 hearing as merely a status conference and defer any formal argument or adjudication on the motions so as to allow the Parties additional time to complete their settlement discussions, negotiate a formal settlement agreement, and present a Rule 9019 motion to the Court.

Respectfully submitted,

JONATHAN R. GOLDSMITH,  
TRUSTEE IN BANKRUPTCY FOR  
WESTBOROUGH SPE LLC

TOWN OF WESTBOROUGH,

By its attorneys,

/s/ Jonathan R. Goldsmith (with permission)

Jonathan R. Goldsmith (BBO# 548285)  
GOLDSMITH, KATZ & ARGENIO, P.C.  
1350 Main Street, 15th Floor  
Springfield, MA 01103  
Tel: (413) 747-0700  
Email: jgoldsmith@gkalawfirm.com

/s/ Roger L. Smerage

Brian W. Riley (BBO# 555385)  
Jeffrey T. Blake (BBO# 655773)  
Roger L. Smerage (BBO# 675388)  
KP Law, P.C.  
Town Counsel  
101 Arch Street, 12th Floor  
Boston, MA 02110-1109  
(617) 556-0007  
briley@k-plaw.com  
jblake@k-plaw.com  
rsmerage@k-plaw.com

Dated: February 9, 2024

903694/WBOR/0049

CERTIFICATE OF SERVICE

I, Roger L. Smerage, hereby certify that on the below date, I caused a copy of the foregoing Joint Status Report to be served through the Court's CM/ECF system to the following counsel of record or by U.S. mail to the following unregistered parties:

Stephen F. Gordon  
The Gordon Law Firm LLP  
River Place  
57 River Street  
Wellesley, MA 02481  
sgordon@gordonfirm.com  
*Attorney for Petitioning  
Creditors*

Jonathan R. Goldsmith  
Goldsmith, Katz & Argenio  
P.C.  
1350 Main Street, 15th Floor  
Springfield, MA 01103  
trusteedocs1@gkcalawfirm.com  
*Attorney for Chapter 7  
Trustee*

Richard King  
Office of US. Trustee  
446 Main Street  
14th Floor  
Worcester, MA 01608  
*Attorney for the U.S. Trustee*

Westborough SPE, LLC  
c/o Lolonyon Akouete  
1241 Deer Park Ave., Suite 1,  
#1051  
North Babylon, NY 11703  
*Debtor (by U.S. mail)*

Scott A. Schlager  
Nathanson & Goldberg, P.C.  
183 State Street, 5th Floor  
Boston, MA 02109  
sas@natgolaw.com  
*Attorney for Creditor  
Nathanson & Goldberg, P.C.*

Paul W. Carey  
Mirick, O'Connell, DeMallie  
& Lougee, LLP  
100 Front Street  
Worcester, MA 01608-1477  
pcarey@mirickoconnell.com  
*Attorney for Creditor Ferris  
Development Group, LLC*

Darin Clagg  
24 Kobbs Korner Rd.  
Pine Bush, NY 12566  
*Creditor (by U.S. Mail)*

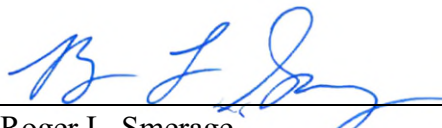
Matthew A. Morris  
Sherin and Lodgen LLP  
101 Federal Street, 30th Floor  
Boston, MA 02110  
mmorris@sherin.com  
*Creditor (by email)*

Lolonyon Akouete  
800 Red Milles Rd.  
Wallkill, NY 12589  
info@smartinvestorsllc.com  
*Creditor (by email)*

Denise Edwards  
137 North 25th Street  
Wyandanch, NY 11798  
deniseedwards818@yahoo.com  
*Creditor (by email)*

Lenard Benson Zide  
Butters Brazilian LLP  
420 Boylston Street, 4th Floor  
Boston, MA 02116  
zide@butterusbrazilian.com  
*Attorney for Creditor The  
MobileStreet Trust (by email)*

Dated: February 9, 2024

  
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Roger L. Smerage